IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SLAWOMIR PLEWA, Plaintiff, v. CITY OF CHICAGO POLICE BOARD and THE SUPERINTENDENT OF CHICAGO POLICE, GARRY MCCARTHY, Defendants.	)	13 CH 19003 Judge Diane J. Larsen Calendar 7

MEMORANDUM OPINION AND ORDER

This cause is before the court on Plaintiff Slawomir Plewa's Complaint for Administrative Review, over which the court has both subject matter and personal jurisdiction. The court has received and reviewed the foregoing Complaint, Defendant Police Board of Chicago's Answer to the Complaint (in the form of the Record of Proceedings in Police Board Case Number 12 PB 2819), Plaintiff's Brief in Support of his Complaint, Defendant's Response, and Plaintiff's Reply thereto. The court has also reviewed the relevant case law and statutory authority, along with all attached exhibits. For the following reasons, the court reverses in part and remands in part for further proceedings consistent with this opinion and order.

I. BACKGROUND

Plaintiff, Slawomir Plewa ("Plewa"), joined the Chicago Police Department (the "Department") on October 29, 2001. (R. at 409 (Hr'g Tr. 210:13–14)).[1] Plewa worked with the Department until

1 Defendant provided the court with a courtesy copy of record of proceedings in the Police Board case (12 PB 2819), which includes the transcript of the Plewa's hearing in front of Hearing Officer Walker. The court uses the

October 4, 2012, at which time he was suspended without pay for alleged breaches of the Department's Rules of Conduct, as Contained in Article V of the Rules of Regulations of the Department (the "Rules"). (R. at 001–05). After a hearing on those charges, the Police Board (the "Board") voted to discharge Plewa from his position with the Department. (R. at 030). Plewa now seeks administrative review of that decision.

A. The Underlying Facts

i. The Personal History Questionnaire Submitted as Part of Plewa's Application

Plewa began his employment with the Department on October 29, 2001. (R. at 490 (Hr'g Tr. 210:13–14)). As part of his application, the Department required Plewa to complete a Personal History Questionnaire (the "Questionnaire"). (R. at 74–86, 362 (Hr'g Tr. 27:14–16, 19–24, 28:1–5)). Question fifty-seven of the Questionnaire ("Question fifty-seven") asked "have you [the applicant] ever been interviewed by the Police in a criminal matter?" (R. at 081, 362 (Hr'g Tr. 28:8–16)). Plewa testified that he answered in the negative (by checking a "no" box), thus asserting that he had never been interviewed by the police in a criminal matter. (R. at 362 (Hr'g Tr. 28:8–21)). Plewa testified that he answered "no" because he believed that the question referred only to whether he had been the *subject* of any criminal investigation. (R. at 414 (Hr'g Tr. 231:1–9) ("Q [Mr. Herbert]: My question to you is when you answered . . . question number 57 . . . when you answered that 'no,' what was the reason for you answering that question no? A. [Mr. Plewa] I believe that question referred to whether I was the subject of a criminal investigation, whether I was an offender or not")). Plewa stated that he thought that Question fifty-seven referred only to his own criminal transgressions because the questions directly preceding that question all referred to his personal involvement in crime. (R. at 414 (Hr'g Tr. 231:10–13)). Plewa further testified that prior to signing the Questionnaire he read the disclaimer that stated "I

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abbreviation of "R." for record generally. The court also provides pinpoint citations to the Hearing Transcript in parentheses when appropriate (using the abbreviation "Hr'g Tr." and stating both the page and line number).

have reviewed the questionnaire on this date . . . and reaffirm my position that all of the information provided to me in this questionnaire remains true and correct, or where applicable I have made necessary corrections and changes." (R. at 362 (Hr'g Tr. 29:22–24, 30:1–12)). Plewa confirmed during his testimony that he believed then, and continues to believe: (1) that his answer to Question 57 was correct, (2) that he was answering to the best of his knowledge, and (3) that he was not being deceptive in any way when he answered the question. (R. at 363 (Hr'g Tr. 29:6–16), 414 (Hr'g Tr. 231:14–16, 232:21–24, 233:1–2)).

Plewa also admitted that in July 2001 (after he had completed and signed the Questionnaire but before he got the job), he met with then-Investigator, now Detective Kenneth Pisano ("Pisano"). (R. at 363 (Hr'g Tr. 30:19–23 31:9–11), 385 (Hr'g Tr. 120:8–9, 18–22)). Plewa testified that during that meeting he "went through" his answers to the Questionnaire with Pisano. (R. at 363 (Hr'g Tr. 31:17–21. 32:6–7). However, Plewa stated that he did not recollect whether Pisano gave him the opportunity to review, amend or verify those answers. (R. at 363–64 (Hr'g Tr. 32:23–24, 33:1–2, 13, 22–24, 34:1–12, 35:17–19, 36:16)). The hearing officer also took testimony from Pisano. Pisano testified that he met with Plewa on July 11, 2001 to conduct a background interview regarding Plewa's application. (R. at 385–86 (Hr'g Tr. 120:18–24, 121:1–11)). Pisano testified that he reviewed the Questionnaire with Plewa and further asked Plewa whether he wished to make any changes; however, Pisano stated that he did not recollect whether he specifically addressed question 57. (R. at 386 (Hr'g Tr. 123:9–24, 124:1–8), 388 (Hr'g Tr. 131:13–18)). Pisano testified that Plewa did not make any changes to his Questionnaire answers. (R. at 386 (Hr'g Tr. 123:20–22)). Pisano also testified that he did not investigate further into Plewa's criminal background specifically because Plewa answered question 57 in the negative. (R. at 390 (Hr'g Tr. 137:20–24, 138:1–24, 139:1–2)).

ii. Plewa's Meeting with Special Agents Loan and Packert

Plewa testified that he met with Special Agents Steve Loan ("Loan") and Rich Packert ("Packert"), who asked him questions about James "Bobby" Marabanian ("Marabanian"). (R. at 364–65 (Hr'g Tr. 36:18–24, 37:1–22)). At that time, Loan and Packert suspected that Marabanian had been using a fake police badge to impersonate a police officer. (R. at 365 (Hr'g Tr. 37:23–24, 38:1–3)). On adverse examination, Plewa testified that he could not remember the details of that meeting. (R. at 364 (Hr'g Tr. 43:12–17) ([By Mr. Grant] Q: What happened during that meeting with Mr. Loan and Mr. Packert, as best you can recall? [By Mr. Plewa] A: I believe they came and discussed at the time Bobby Marabanian. They came to discuss what his status was and how I knew him. As far as specific details, I don't recollect them")). When questioned by his own attorney for clarification, however, Plewa testified that Loan and Packert: (1) did not read him his *Miranda* warnings; (2) did not inform that he was the subject of any criminal liability; and (3) did not indicate that they were conducting a *criminal* investigation of Marabanian (*i.e.* believed that he was merely "helping them out" with an "internal investigation"). (R. at 414 (Hr'g Tr. 231:22–24, 232:1–20), 367 (Hr'g Tr. 46:20–21, 47:3, 48:1–8)). In contrast, Loan testified that in February 1999, he met with Plewa in connection with the *arrest* of Marabanian. (R. at 378 (Hr'g Tr. 91:24, 92:1–24)). Loan further testified that he informed Plewa that Marabanian had been arrested for impersonating a police officer by using a police badge and that Marabanian had implicated Plewa by suggesting that Plewa had given Marabanian the badge in question. (R. at 378–79 (Hr'g Tr. 92:14–24, 93:1–11)). Loan also testified that as part of his investigation he confiscated the badges from Plewa and gave Plewa a receipt for the same. (*Id.* at 379, Hr'g Tr. 93:17–24, 94:1–6). Loan conceded, however, that he did not read Plewa his Miranda rights. (*Id.* at 382 (Hr'g Tr. 108:17–19)).

iii. Arrest of Sylwia Marcinczyk and the Subsequent Trials

On April 1, 2007, Plewa received information from an anonymous informant suggesting that Sylwia Marcinczyk ("Marcinczyk") would be delivering drugs into Chicago using a white Toyota Highlander. (R. at 375–76 (Hr'g Tr. 80:21–24, 81:1–14, 82:8–19, 85:8–12)). Plewa presented that information to his sergeant, Sergeant Muscolino, who told Plewa to proceed with the investigation. (R. at 376–77 (Hr'g Tr. 84:4–10, 85:13–21)). Based solely on that tip-off, Plewa and his colleagues stopped Marcinczyk and searched her car, whereupon they found both drugs and a gun in a heat-sealed bag. (Def.'s Resp. 3; R. at 377 (Hr'g Tr. 88:8–11)). The officers then arrested Marcinczyk. (Def.'s Resp. 3; Hr'g Tr. 224:2–5). Marcinczyk was later tried on charges relating to the possession of the weapon and narcotics found in her car. On January 18, 2008, Plewa testified at Marcinczyk's criminal trial, styled *People v. Sylwia Marcinczyk*, 07 CR 114861 (the "Marcinczyk Trial"). (Def.'s Resp. 3; Hr'g Tr. 224:6–8). Marcinczyk was found not guilty of all charges filed against her. (Def.'s Resp. 3). Moreover, her defense attorney, Steven Messner ("Messner"), began to suspect that her arrest did not follow normal protocol. (*Id.*) Messner subsequently brought his suspicions to the attention of the Cook County Assistant State's Attorney in the Special Prosecutors Division, who in turn contacted the Internal Affairs Division of the Department ("Internal Affairs"). (*Id.* at 4). Internal Affairs then initiated an investigation to determine whether Plewa's conduct was inappropriate. (*Id.*) As a result of this investigation, Plewa was arrested and charged with (1) official misconduct; (2) perjury; (3) obstructing justice; (4) unlawful restraint; and (5) false reporting (a subsection of disorderly conduct). (*Id.*)

Plewa's criminal trial (styled *People v. Slawomir Plewa*, 08 CR 19286) (the "Plewa Trial") took place on August 18, 2010 and August 19, 2010, during which Plewa testified on his own behalf. (Def.'s Resp. 4; R. at 412 (Hr'g Tr. 224:20–23)). After hearing the evidence, the Honorable Judge Michael Brown ("Judge Brown") concluded that Plewa had lied under oath and gave false testimony in the Marcinczyk trial. (Def.'s Resp. 4; R. at 188–198). However, Judge Brown also found that the

prosecution had not met its burden of proof as to each of the charges and, therefore, found Plewa not guilty of all charges filed against him. (R. at. 188–198). Neither Plewa's testimony during Marcinczyk's trial nor his testimony at his own trial is contained the record before this court.

B. The Underlying Charges

On September 12, 2013, the Superintendent of the Chicago Police Department ("Superintendent") served Plewa with the charges comprising the underlying matter, *In The Matter of Charges Against Slawomir Plewa*, 12 PB 2819. (Br. in Supp. 2). These charges were filed with the Board on September 24, 2012. (R. at 005). The Superintendent charged Plewa with violating the following Rules:

Rule 2:	Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
Rule 3:	Any failure to promote the Department's efforts to implement its policy or accomplish its goals;
Rule 5:	Failure to perform any duty;
Rule 11:	Incompetency or inefficiency in the performance of duty;
Rule 14:	Making a false report, written or oral; and
Rule 21:	Failure to report promptly to the Department any information concerning any crime or unlawful action.

(R. at 001–05; Br. in Supp. 1–2).

The Superintendent alleged that Plewa violated Rules 2, 3, and 5 by: (1) falsely reporting information on the Questionnaire (count I); (2) confirming those false statements during his pre-employment interview with Pisano (count II); (3) failing to disclose that he had previously been involved in criminal conduct, specifically criminal case number 98 D 3067 (count III); (4) giving false testimony in the Marcinczyk Trial (count IV); and (5) giving false testimony in his own criminal case, the Plewa Trial (count V). (R. at 001–04). The Superintendent alleged that Plewa violated Rule 11 by: (1) giving false testimony in the Marcinczyk Trial (count I); and (2) giving false testimony in his own criminal case, the Plewa Trial (count II). (R. at 004). The Superintendent alleged that Plewa violated Rule 14 by: (1) falsely reporting information on the Questionnaire (count I); (2) confirming those false statements during

his pre-employment interview with Pisano (count II); (3) giving false testimony in the Marcinczyk Trial (count III); and (4) giving false testimony in his own criminal case, the Plewa Trial (count IV). (R. at 004–05). Finally, the Superintendent alleged that Plewa violated Rule 21 by failing to disclose to the Department that he had previously been involved in criminal conduct (case number 98 D 3067). (R. at 005).

Figure I: Summary of the Charges Issued Against Plewa in Police Board Case 12 PB 2819.

COUNT:	Charges re: Application Process			Charges re: false testimony	
RULE:	False Report on Questionnaire (Question 57)	False information given during interview with Pisano	Ongoing Failure to Disclose Involvement in Criminal Conduct	False Testimony In Marcinczyk Trial	False Testimony In Plewa Trial
Rule 2	X	X	X	X	X
Rule 3	X	X	X	X	X
Rule 5	X	X	X	X	X
Rule 11				X	X
Rule 14	X	X		X	X
Rule 21			X		

C. Procedural Posture of the Police Board Hearing

The parties first appeared before Hearing Officer Walker ("Walker") on October 16, 2012, at which time the parties set a pre-trial conference for November 19, 2012 and set the hearing for December 6, 2012 and December 18, 2012. (R. at 273). The pre-trial conference was subsequently rescheduled for November 26, 2012, at which time Walker read into the record the matters discussed at the pre-trial conference (including, *inter alia*, the proposed exhibits, possible stipulations, and anticipated witnesses). (R. at 276–82). Plewa neither indicated an intent to file a motion for a bill of particulars nor did he object to the specificity of the charges against him at that time. (*Id.*) On November 30, 2012, the Superintendent filed a motion for continuance. (R. at 061). On December 6, 2012, Walker heard and granted that motion and reset trial to December 18, 2012 (with additional dates scheduled for December 19, 2012 and January 7, 2013, if needed). (R. at 294–95). On December 12,

2012, six days before the hearing was set to begin, Plewa filed his motion for a bill of particulars. (R. at 62). On December 17, 2012, Walker both heard and denied that motion. (R. at 298–329).

The hearing began on December 18, 2012 and ended on December 19, 2012. Both parties presented their arguments, entered exhibits into evidence, and delivered closing arguments. (Br. in Supp. 3). The trial transcripts in the Marcinczyk Trial and Plewa Trial (collectively, the "Underlying Trials") were not admitted as evidence during the hearing, and Walker did not take judicial notice of those transcripts at that time. (R. at 420 (Hr'g Tr. 254:4–24, 255:1–7)). The hearing concluded on December 19, 2012, at which time Walker took the matter under advisement. (R. at 428 (Hr'g Tr. 287:17–18)). Walker further stated that she would present the matter to the Board at its next executive session, at which time the Board would render its decision. (R. at 428 (Hr'g Tr. 287:17–20)).

In fact, the Board did not render a decision at its next executive session. Instead, on April 18, 2013 the Board issued an order declaring that the hearing "shall be reconvened for the purpose of considering the issue of whether the Police Board may take judicial notice of the transcripts from the [Underlying Trials]." (R. at 042–43). The Board reconvened the hearing on May 7, 2013, at which time Walker set a schedule for the parties to submit legal briefs on the issue. (R. at 450–59). On June 20, 2013, after all parties had submitted legal briefs and had made oral arguments (*see* R. at 460–99) the Board issued an order stating that it would "take judicial notice of pages 145 through 156 of the [Plewa Trial]." (R. at 044–45). The Board further ordered that those pages be made part of the record in Plewa's disciplinary hearing. (R. at 046).

On June 27, 2013, Walker sat at an additional specially-reconvened hearing so that the parties could present further evidence and provide supplemental closing arguments in light of the additional evidence (*i.e.* the ten pages of judicially-noticed transcript). (R. at 500–53). The Superintendent did not submit any additional evidence. (Br. in Supp. 5). Subsequent to that hearing, Plewa also filed both a motion to strike and dismiss all charges filed against him and a motion for mistrial (the latter of

which was voluntarily withdrawn). (R. at 65–72, 157–72). In addition, Walker made an oral report to and conferred with the Board on various matters including the credibility of Plewa. (R. at 006–07, 029–30). The Board then read and reviewed the record of the hearing, viewed the video-recording of Plewa's testimony before Walker, and reviewed Plewa's motion to strike and dismiss. (R. at 006). In a written decision dated July 18, 2013, the Board: (1) denied Plewa's motion to strike and dismiss; and (2) voted by a majority of eight to one to discharge Plewa from his position as a police officer with the Department.[2] (R. at 006–30).

On August 15, 2013, Plewa filed this matter pursuant to the Illinois Administrative Review Act (735 ILCS 5/3-101, *et seq.*), seeking to reverse the Board's decision and its denial of his motion to strike and dismiss. (Br. in Supp. 1). With respect to the charges relating to the application process, Plewa argues that the Board erred in denying his motion to strike and dismiss because: (a) he was not a member of the police when he completed the Questionnaire, and therefore the Rules did not apply to him; and (b) the doctrine of *laches* otherwise bars those charges. (*Id.* at 10, 12–13). With respect to the charges relating to false testimony in the Underlying Trials, Plewa argues that: (a) the Board erred when it denied his motion for bill of particulars (*i.e.* he was denied his due process rights because the charges against him lacked the requisite specificity); (b) the Board erred in taking judicial notice of the transcripts because they were inadmissible hearsay; (c) he was denied a fair trial because the Superintendent repeatedly misstated evidence and argued facts that were not in evidence; and (d) the decision was otherwise against the manifest weight of the evidence. (*Id.* 10–12, 13–24).

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2 By a unanimous vote, the Board denied Plewa's motion to strike and dismiss. (R. at 030). By a vote of five four, the Board found Plewa guilty of violations Rule 2 (Counts I, II, and III); Rule 3 (Counts I, II, and III); Rule 5 (Counts I, II, and III); Rule 14 (Counts I and II); and Rule 21. (*Id.*) By a vote of eight to one, the Board found Plewa guilty of violating Rule 2 (Count IV); Rule 3 (Count IV); Rule 5 (Count IV); Rule 11 (Count I); and Rule 14 (Count III). (*Id.*) By a vote of eight to one, the Board found Plewa not guilty of violating Rule 2 (Count V); Rule 3 (Count V); Rule 5 (Count V); Rule 11 (Count II); and Rule 14 (Count IV). (*Id.*)

II. STANDARD OF REVIEW

The Board is an administrative agency whose findings of fact on review "shall be held to be prima facie true and correct." 735 ILCS 5/3-110; *Speed Dist. 802 v. Warning*, 242 Ill. 2d 92, 111–12 (2011). A court cannot consider evidence outside of the record of the administrative appeal; therefore, the court's review is limited to the record, federal statutes and regulations, state statutes and regulations, and the relevant policies of the agency. 735 ILCS 5/3-110; *Lyon v. Dep't of Children & Family Servs.*, 209 Ill. 2d 264, 271 (2004). In addition, a reviewing court may not substitute its reasoning for that of the agency. *Wolinsky v. Kadison*, 2013 IL App (1st) 111186, ¶ 116 (citing *People v. A Parcel of Property Commonly Known As 1945 N. 31st Street*, 217 Ill. 2d 481, 510 (2005)). Determinations as to the weight of the evidence or credibility of witnesses are best handled by the administrative agency and will not be disturbed on administrative review unless they are against the manifest weight of the evidence. *People v. A Parcel of Property Commonly Known As 1945 N. 31st Street*, 217 Ill. 2d 481, 507, 509–10 (2005). If the record contains evidence to support the agency's decision, the decision must be affirmed. *1212 Rest. Grp., LLC v. Alexander*, 2011 IL App (1st) 100797, ¶ 42.

The standard of review in an action for administrative review depends upon the nature of the question that the reviewing court is addressing. *Swanson v. Bd. of Trs. of the Flossmoor Police Pension Fund*, 2014 IL App (1st) 130561, ¶ 27. Questions of fact are reviewed using a manifest weight standard. *Speed Dist. 802 v. Warning*, 242 Ill. 2d 92, 111–12 (2011); *Swanson v. Bd. of Trs. of the Flossmoor Police Pension Fund*, 2014 IL App (1st) 130561, ¶ 27. In contrast, questions of law are subject to *de novo* review, a standard that is characterized as "independent and not deferential." *Hossfeld v. Ill. State Bd. of Elections*, 238 Ill. 2d 418, 423 (2010); *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 210–11 (2008). Mixed questions of fact and law are reviewed under a clearly erroneous standard. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 210–11 (2008). Evidentiary rulings are generally subject to an abuse of discretion standard. *Crittenden v. Cook Cnty. Comm'n on Human Rights*, 2012 IL

App (1st) 112437, ¶ 59 ("An administrative agency's decision concerning the introduction of evidence is properly governed by an abuse of discretion standard and subject to reversal only if there is demonstrable prejudice to the party" (internal citations omitted)). However, the question as to whether evidence is properly excluded as hearsay is a question of law that is reviewed *de novo*. *Vill. Disc. Outlet v. Dep't of Empl. Sec.*, 384 Ill. App. 3d 522, 525 (1st Dist. 2008).

III. DISCUSSION

A. Charges Relating to the Application Process (*i.e.* the Questionnaire, Plewa's Pre-Employment Interview with Pisano, and His Alleged Failure to Disclose That He Was Involved in Criminal Conduct)

The Board found that Plewa violated Rules 2, 3, 5, and 14 by falsely reporting on the Questionnaire that he had never been interviewed by the police in a criminal manner and by providing false information to Pisano during his pre-employment interview. (R. at 006–31). The Board further found that Plewa violated Rules 2, 3, 5, and 21 by failing to disclose his prior involvement in criminal conduct (*i.e.* the interview with Loan and Packert) during both the application process and his continued employment with the Department. (R. at 006–31). With respect to Plewa's 1999 meeting with Loan and Packert, the Board found that that: (1) Loan and Packert visited Plewa at his house and questioned him about Marabanian; (2) Loan testified credibly that he informed Plewa that Marabanian had been "arrested" for impersonating a police officer (by using a police badge) and that Marabanian had indicated that he received that badge from Plewa; (3) that Loan's use of the word "arrest" reasonably connoted that the interview involved a criminal matter; (4) that it is not credible that Loan and Packert would have visited Plewa and not informed him that they were there on a criminal investigation; and (5) that accordingly, "Plewa knew, or should have known, yet failed to disclose to the Department, that he was involved in criminal conduct . . . ." (R. at 014–16). The Board also specifically found that Plewa's testimony to the contrary was not credible. (R. at 016–17). With respect to Plewa's meeting with Pisano, the Board found that (1) Pisano presented convincing testimony that he gave Plewa opportunity

to review his answers, including his answer to Question fifty-seven, and to make any changes that Plewa deemed necessary; and that (2) Plewa nonetheless failed to do so. (R. at 016). Based on these findings of fact, the Board found Plewa guilty of all charges relating to the application process. Plewa contends that the Board should have dismissed those charges because: (1) the Rules did not apply to him (because, by definition, he was not a member of the Department during the application process); and (2) the charges were untimely (because the doctrine of *laches* bars the suit). (Br. in Supp. 10, 12–13). For the following reasons, this court finds both of those arguments to be unpersuasive.

First, Plewa contends that the Rules did not apply to him during the application process because he was not a member of the Department at that time. (Br. in Supp. 12–13). The court finds this position to be untenable. If the court were to accept that argument, it would not only grant all applicants a *carte blanche* to lie on their applications, but would further provide those applicants with a shield to disciplinary action when those falsehoods went undiscovered for a number of years. Instead, the court agrees with the Superintendent to the extent that a broad application of the Rules is important to "protect the integrity of the [Department] as a whole." (Def.'s Resp. 15–16). Accordingly, the court finds that the Board correctly held that Plewa had an ongoing duty to supplement and disclose all information relevant to his application not only throughout the application process but also during his service as a Chicago police officer.

Second, Plewa contends that the doctrine of *laches* bars this suit. The doctrine of *laches* bars a cause of action when a party's failure to timely assert a right has caused prejudice to the adverse party. *Van Milligan v. Bd. of Fire & Police Comm'rs*, 158 Ill. 2d 85, 89 (1994). The defense of *laches* may be available to an aggrieved individual in an administrative action if a substantial delay has occurred between the time of the subject occurrence and the time the related charges are brought. *Bultas v. Bd. of Fire & Police Comm'rs*, 171 Ill. App. 3d 189, 195 (1st Dist. 1988). However, mere delay is generally insufficient to apply *laches*; the doctrine of *laches* will not apply unless there is some additional showing

of prejudice to the aggrieved party. *Van Milligan v. Bd. of Fire & Police Comm'rs*, 158 Ill. 2d 85, 89 (1994) (stating that "[t]he two fundamental elements of *laches* are lack of due diligence by the party asserting the claim *and prejudice to the opposing party*" and that "courts have refused to apply *laches* where there was no showing of prejudice and the parties could obtain a fair trial notwithstanding the delay in bringing suit") (second emphasis added); *LaSalle Nat'l Bank v. Dubin Residential Cmtys. Corp.*, 337 Ill. App. 3d 345, 351 (1st Dist. 2003) ("If the defendant is not injured by the delay, *laches* is inapplicable"). Prejudice may result if the delay in bring suit prevents a fair conclusion because evidence has been lost or has otherwise become obscured (because, for example, the evidence consists of conflicting recollection testimony and several witnesses are unavailable). *People ex rel. Jaworski v. Jenkins*, 56 Ill. App. 3d 1028, 1032–33 (1st Dist. 1979) (doctrine of *laches* did not apply when the respondent would not suffer prejudice in presenting his own defense because there was written evidence in the record such that the evidence would not be based solely upon the recollection of witnesses); *accord Bultas v. Bd. of Fire & Police Comm'rs*, 171 Ill. App. 3d 189, 195 (1st Dist. 1988); *Jager v. Ill. Liquor Control Comm'n*, 74 Ill. App. 3d 33, 42 (1979) (*laches* did not apply because the facts were uncontroverted, the delay did not prejudice the respondent's ability to present his claims, and the delay did not "adversely affect[] the ability of the trier of fact from determining the truth of the matters at issue . . .").

Whether or not *laches* applies depends on the particular facts and circumstances of each case. *Wabash Cnty. v. Ill. Mun. Ret. Fund*, 408 Ill. App. 3d 924, 933 (2d Dist. 2011); *Negron v. City of Chi.*, 376 Ill. App. 3d 242, 247 (1st Dist. 2007). The party asserting *laches* bears the burden of pleading and proving both the delay and its prejudicial effect. *Lozman v. Putnam*, 379 Ill. App. 3d 807, 822 (1st Dist. 2008); *LaSalle Nat'l Bank v. Dubin Residential Cmtys. Corp.*, 337 Ill. App. 3d 345, 351 (1st Dist. 2003). In addition, courts are unwilling to apply the doctrine of *laches* to the actions of public entities unless the movant establishes unusual or extraordinary circumstances. *See, e.g., Hillard v. Bagnola*, 297 Ill. App.

3d 906, 917 (1st Dist. 1998) ("[*L*]*aches* does not apply to the exercise of governmental powers except under compelling circumstances"); *see also City of Chi. v. Alessia*, 348 Ill. App. 3d 218, 229 (1st Dist. 2004) (noting that the party seeking to assert *laches* against a governmental agency must show "a positive or affirmative act" as opposed to mere inaction).

In this case, Plewa has not demonstrated that he suffered any prejudice as a result of the Superintendent's delay in filing the charges. The charges were not corroborated solely by witness recollection; in contrast, written documents supported each of the charges against him (*i.e.* the Questionnaire). Moreover, Plewa admitted to answering Question fifty-seven in the negative and further conceded that he signed the Questionnaire to verify that he had answered truthfully and to the best of his knowledge. (R. at 362–63 (Hr'g Tr. 27:14–24, 28:1–21, 29:9–16, 22–24, 30:1–12)) For this reason, the court finds that the case of *Orsa v. Chicago Police Board*,[3] which was cited by Plewa, to be distinguishable. Moreover, Plewa was not suspended without pay until *after* the charges were filed. (R. at 001–05, 362 (Hr'g Tr. 26:1–6)). For that reason, the court also finds the cases of *Stull*[4] *and Cavaretta*[5] (as cited in *Orsa*) to be distinguishable, and therefore does not find that the delay in filing the charges violated Plewa's due process right to a prompt hearing. The court also notes that there are no exceptional circumstances in this matter that would justify applying the doctrine of *laches* to a governmental entity.

Finally, and upon review of the evidence on record and the testimony elicited at trial, this court cannot say that that the Board's determination with respect to the charges relating to the application process is against the manifest weight of the evidence. Neither party disputes that Plewa intentionally answered Question fifty seven in the negative. Instead, the Board's decision turned largely upon its assessment of the credibility of Plewa, Loan, and Pisano. Plewa testified as to his interpretation of the

3 *Orsa v. Chi. Police Bd.*, No. 11 CH 8166 (consol. 11 CH 8424, 11 CH 19551) (Cir. Ct. Cook Co.).
4 *Stull v. Dep't of Children & Family Servs.*, 239 Ill. App. 3d 325 (5th Dist. 1992).
5 *Cavaretta v. Dep't of Children & Family Servs.*, 277 Ill. App. 3d 16 (2d Dist. 1996).

question and the reason for his answer; the Board specifically rejected that testimony as incredible. In contrast, the Board found the testimony of both Loan and Pisano to be credible. As noted above, this court may not re-assess the credibility of witnesses. *People v. A Parcel of Property Commonly Known As 1945 N. 31st Street*, 217 Ill. 2d 481, 507, 509–10 (2005). Accordingly, the courts affirms the Board's decision to find Plewa guilty of the charges against him with respect to the application process (*i.e.* Rule 2 (counts I, II, and III); Rule 3 (counts I, II, and III); Rule 5 (counts I, II, and III); Rule 14 (counts I and II); and Rule 21).

B. Charges Relating to the Underlying Trials

i. The Board Properly Affirmed Hearing Officer Walker's Decision to Deny Plaintiff's Bill of Particulars

On December 12, 2012, Plewa filed his motion for a bill of particulars pursuant to section 2-607 of the Code of Civil Procedure (735 ILCS 5/2-607), arguing that the charging document failed to adequately specify the charges levied against him. (R. at 062–063; Br. in Supp. 10–12). Plewa conceded that the charging document contained general allegations that Plewa gave false testimony in the Plewa Trial, but alleged that it failed to identify specific portions of Plewa's testimony that comprised the allegedly false testimony. (Br. in Supp. 10–12). Plewa argued that the lack of specificity both prevented him from adequately defend himself and violated his due process rights. (*Id.*)

Walker heard argument on the motion for bill of particulars on December 17, 2012, the day before the hearing was set to proceed. (R. at 298–329). Walker denied Plewa's motion, in large part due to the timing of the motion. Walker stated as follows:

> HEARING OFFICER WALKER: The problem I see with your motion is not so much that you're asking for further information, but when you're asking for further information, that's the problem I'm having, and how if that motion were allowed, how would that be able to be done in time for this hearing to proceed tomorrow with both sides being fully informed?
>
> * * *

> And I am, frankly, struggling with this because, as you know, I've been a Hearing Officer here a long time. I've never seen a motion like this, and certainly not on the eve of hearing, so taking all of that into consideration, I'm going to deny your motion.

(*Id.* at 328–29).

Proceedings in front of the Board are governed by both the Police Board City of Chicago Rules of Procedure (Board Rules of Procedure) and the Illinois Rules of Civil Procedure. However, the latter of these are not binding on the Board. 65 ILCS 5/10-1-18.1 ("The Police Board, or any member thereof, is not bound by formal or technical rules of evidence . . .").

Charges in an administrative proceeding need not be drawn with the same precision of pleadings in judicial proceedings. *Rohrback v. Ill. Dep't of Empl. Sec.*, 361 Ill. App. 3d 298, 309 (4th Dist. 2005); *Burns v. Police Bd. of Chi.*, 104 Ill. App. 3d 612, 615 (1st Dist. 1982). However, "the charge in an administrative proceeding is required to advise adequately the respondent as to the charges so that he will be able intelligently to prepare his defense." *Cooper v. Ill. Dep't of Children & Family Servs.*, 234 Ill. App. 3d 474, 486 (4th Dist. 1992); *see also Rohrback v. Ill. Dep't of Empl. Sec.*, 361 Ill. App. 3d 298, 309 (4th Dist. 2005) (noting that charges "must contain a clear statement of the theory on which the agency intends to rely, so that the employee can prepare a defense"); 65 ILCS 5/10-1-18.1 ("Before any . . . officer or employee may be interrogated or examined by or before any disciplinary board . . . the results of which . . . may be the basis for filing charges seeking his removal or discharge, he must be advised in writing as to what specific improper or illegal act he is alleged to have committed"). The Board Rules of Procedure state that "[t]he charges shall set forth the Rule or Rules of conduct which the employee is alleged to have violated and shall include specifications for each such alleged violation." (R. at 107, Board Rules of Procedure, ¶ I.B). The Board Rules of Procedure further state that those charges and specifications "shall be set forth in simple, non-technical language . . . ." (*Id.*, ¶ I.C).

If the respondent does not believe that the charges are sufficiently specific, he may file a bill of particulars. 735 ILCS 5/2-607(a); *see also Guzell v. Civil Serv. Comm'n*, 17 Ill. App. 3d 266, 272 (1st Dist.

1974) ("If [Defendant has] any doubt and desire[s] a more extensive detailing of the charge, a bill of particulars should [be] requested"). The Illinois Code of Civil Procedure states that such a motion must be filed "[w]ithin the time a party is to respond to a pleading." 735 ILCS 5/2-607(a). The Board Rules of Procedure provide further guidance on the timeliness of motions, stating that any motion must be filed at least five days prior to trial. (R. at 108, Board Rules of Procedure, ¶ II.C) ("It shall otherwise be the duty of the respondent or the respondent's attorney to file any and all motions . . . at least five (5) days in advance of the date set for hearing").

Upon review, the court affirms the Board's decision to deny Plewa's motion for a bill of particulars and finds that the charges did not violate Plewa's due process rights. Due process in an administrative proceeding "is a flexible concept and requires only such procedural protections as fundamental principles of justice and the particular situation demand." *Abrahamson v. Ill. Dep't of Prof'l Regulation*, 153 Ill. 2d 76, 92 (1992); *Jackson v. City of Chi.*, 2012 IL App (1st) 111044, ¶ 76. And as noted above, charges in an administrative proceeding are sufficient so long as they adequately advise the respondent so that he can intelligently prepare his defense. *Id.* In this case, the charges meet that standard. The charging document clearly establishes the theories upon which the Superintendent relies, lists each Rule that Plewa allegedly violated, and further provides particularized counts indicating how Plewa allegedly violated those Rules. The charges alleging that Plewa gave false testimony further specifically provided the dates on which Plewa allegedly gave that false testimony. Therefore, when taken as a whole, the charges were sufficient to apprise Plewa of the charges against him and provide him with sufficient notice to allow him to defend himself. Accordingly, although the court recognizes that the Superintendent could have drawn the charges with greater specificity, it does not find them so lacking in detail as to violate due process. Moreover, the court cannot say that the decision to deny Plewa's bill of particulars was an abuse of discretion in light of the time at which it was filed. In this case, the parties had a pre-trial conference on November 26 2012, which was specifically designed to

allow parties to raise motions prior to trial. (R. at 310 (Hr'g Tr. 13:3–12), 329 (Hr'g Tr. 32:1–15)). Plewa's counsel, however, failed to raise the motion at the pre-trial conference. (R. at 276–82). Instead, he waited until only six days prior to trial, despite that fact that he had previously been given discovery in this matter that did specifically detail the allegedly false statements (R. at 316 (Hr'g Tr. 18:11–24)) and despite the fact that the charging document was filed almost three months (seventy-nine days) prior to that time (*see* R. at 005, 062) (charges filed on September 24, 2014 and bill of particulars filed on December 12, 2012). For these reasons, the court affirms the Board's decision to deny Plewa's motion for bill of particulars.

ii. Judicial Notice of the Transcripts Was Proper Because Trial Transcripts Are Not Hearsay

Plewa argues that the Board should not have taken judicial notice of Judge Brown's comments during the Plewa Trial because they are "inadmissible hearsay not subject to any exception to the hearsay rule and they are out of court statements offered for the truth of the matter asserted." (Br. in Supp. 14).

Judicial notice may be taken at any stage of the proceeding. Ill. R. Evid. 201(f). Illinois Rule of Evidence 201(b) provides that: "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Ill. R. Evid. 201(b). Various cases have further held that courts "may take judicial notice of a written decision that is part of the record in another court or administrative tribunal because such documents fall within the category of readily verifiable facts which are capable of instant and unquestionable demonstration." *Hermesdorf v. Wu*, 372 Ill. App. 3d 842, 850 (2d Dist. 2007) (internal quotations omitted); *accord Filrep, S.A. v. Barry*, 88 Ill. App. 3d 935, 941 (1st Dist. 1980) (noting that "the trial judge . . . properly took judicial notice of the facts in the earlier case which indicated that the defendant . . . had committed perjury" because those facts were "capable of immediate and accurate

demonstration by resort to easily accessible sources of indisputable accuracy"); *IFC Credit Corp. v. Rieker Shoe Corp.*, 378 Ill. App. 3d 77, 81 (1st Dist. 2007) (a court may take judicial notice the of public records of other courts); *see also Aurora Loan Servs., LLC v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 37; *Stackman v. City of Geneva*, 395 Ill. App. 3d 489, 491 (2d Dist. 2009). If a fact is subject to judicial notice, an Illinois court shall take judicial notice of that fact if requested by a party and supplied with the necessary information. Ill. R. Evid. 201(d).

The court agrees with Plewa insomuch as hearsay is not properly considered at a Board hearing. (Br. in Supp. 14–15, *citing* R. at 108, Police Board Rules, ¶ III.E; *Julie Q. v. Dep't of Children & Family Servs.*, 2013 IL 113783). However, the cases cited above also clearly establish that statements made by a judge in a criminal trial, even statements with respect to credibility determinations, are not hearsay. Therefore, the Board was at liberty to take judicial notice of his remarks and did not err in doing so.

iii. Plewa Was Not Denied Due Process and Was Afforded a Fair Hearing

Plewa also contends that he was denied a fair trial because, *inter alia*, the Superintendent repeatedly discussed "facts" which were not in evidence, *i.e.* the transcripts and conclusions of Judge Brown. (Br. in Supp. 17–21). However, Plewa is mistaken for the simple reason that the hearing was specially reconvened and therefore did not conclude until June 27, 2013 – *after* the transcript had been admitted into evidence. Moreover, plaintiff was given leave to both brief the issue of whether the Board should take judicial notice of the transcripts and additional argument and evidence after the transcripts were in fact admitted. Therefore, the Board was presented with sufficient evidence to make its decision, the Superintendent did not argue facts that were not in evidence, and Plewa has not adequately pleaded that he was denied due process.

vi. The Decision was Against the Manifest Weight of the Evidence

Finally, Plewa argues that the Board's decision was against the manifest weight of the evidence because the evidence in the record was insufficient to support the Board's finding that he gave false

testimony during the Marcinczyk trial. (*Id.* at 22). Specifically, Plewa argues that the board erred in finding him guilty based solely on the portion of the official transcript of the Plewa Trial that was admitted into evidence. (*Id.*) For the following reasons, the court agrees with Plewa and finds that the Board's decision was against the manifest weight of the evidence.

A trial court's role in reviewing an administrative agency's ruling is to determine whether the agency's decision is just and reasonable in light of the evidence presented in the record. *1212 Rest. Grp., LLC v. Alexander*, 2011 IL App (1st) 100797, ¶ 42. A court reviews the Board's finding that a defendant made a knowingly false statement as a question of fact that is subject to a manifest weight of the evidence standard. *Taylor v. Police Bd.*, 2011 IL App (1st) 101156, ¶ 27 (citing *Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 210 (2008)). A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *People v. A Parcel of Prop. Commonly Known As 1945 N. 31st St.*, 217 Ill. 2d 481, 507 (2005) (citing *Rhodes v. Ill. Cent. Gulf R.R.*, 172 Ill. 2d 213, 242 (1996)); *see also Jenna R.P. v. City of Chi. Sch. Dist. No. 229*, 2013 IL App (1st) 112247, ¶ 43 ("An administrative agency's factual determinations are contrary to the manifest weight of evidence where the opposite conclusion is clearly evident").

In this case, the Board's decision was against the manifest weight of the evidence because there was insufficient evidence in the record to support its decision. None of the witnesses who testified at the hearing, other than Plewa himself, had any knowledge of Plewa's testimony at the Marcinczyk Trial. Nor did the Superintendent introduce the transcripts of either Underlying Trial into evidence at either the initial or specially-reconvened hearing. Moreover, the Board took judicial notice of only ten pages of one trial – the Plewa Trial. In short, the only evidence to support the Board's decision to find Plewa guilty of providing false testimony in the Marcinczyk Trial is the ten-page excerpt of the Plewa Trial containing Judge Brown's conclusions. Those ten pages, however, do not support a finding that Plewa

provided false testimony. In light of the fact that the remaining portions of the Underlying Trial transcripts were not admitted into evidence, Judge Brown's comments are mere conclusions that lack any foundation in the record. Accordingly, those comments cannot stand as a substitute for substantive evidence, especially as they came after the close of evidence and accompanied an acquittal, thus preventing Plewa from appealing or otherwise challenging them. There is *no* evidentiary basis in the limited record before the Board to support Judge Brown's conclusion that Plewa provided false testimony or otherwise lied while giving evidence, and, therefore, the Board's decision is, *ipso facto*, against the manifest weight of the evidence. Accordingly, the court finds that based upon the record before it the Board erred in finding Plewa guilty of providing false testimony in the Marcinczyk Trial.

C. The Appropriate Sanction Regarding the Remaining Charges Should Be Newly Determined by the Board

A court's scope of review of an administrative agency's decision to fire a public employee is a two-step process. First, the court must determine if the findings of fact are against the manifest weight of the evidence; second, the court must decide if the findings of fact, if affirmed, provide a sufficient basis for the agency's conclusion that just cause for the imposed discipline exists. *Walsh v.Bd. of Fire & Police Comm'rs*, 96 Ill. 2d 101, 105 (1983), *see also Abrahamson v. Ill. Dep't of Prof'l Regulation*, 153 Ill. 2d 76, 99 (1992) ("[i]n determining whether an administrative finding is against the manifest weight of the evidence, [the court] should consider the severity of the sanction imposed"). "Cause" is defined as "some substantial shortcoming which renders [the employee's] continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his [discharge]." *Launius v. Bd. of Fire & Police Comm'rs*, 151 Ill. 2d 419, 435 (1992) (alterations in original) (citing *Walsh v. Board of Fire & Police Comm'rs*, 96 Ill. 2d 101, 105 (1983)). For the reasons stated above, the court (1) reverses the Board's finding that Plewa provided false testimony during the Marcinczyk trial; and (2) affirms the Board's decision that Plewa (a) falsely reported information on the Questionnaire, (b) failed to disclose

that falsehood to Pisano, and (c) otherwise failed to disclose that information during his continued service as a police officer. Thus the court now considers whether there was "cause" to dismiss Plewa based solely upon the charges relating to the application process.

Reviewing courts generally defer to an administrative agency's expertise and experience in determining what sanction is appropriate. *Taylor v. Police Bd.*, 2011 IL App (1st) 101156, ¶ 53. The question for the circuit court is not whether it would have decided to impose a more lenient sanction, but whether, in light of the evidence in the record, "the court [could] say that the [Board], in opting for discharge, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the service." *Launius v. Bd. of Fire & Police Comm'rs*, 151 Ill. 2d 419, 436 (1992) (first alteration in original). However, the circuit court is at liberty to reverse the sanction imposed by the administrative board if it abused its discretion by imposing an inappropriate sanction. *See, e.g., Cartwright v. Ill. Civil Serv. Comm'n*, 80 Ill. App. 3d 787, 793–94 (1st Dist. 1980); *Kelsey-Hayes Co. v. Howlett*, 64 Ill. App. 3d 14, 17 (1st Dist. 1978) (finding that "the hearing officer abused his discretion by imposing a sanction which was overly harsh in view of the mitigating circumstances").

After reviewing the record in the present case, the court believes that the Board abused his discretion when it dismissed Plewa. Specifically, the court finds that the dismissal of Plewa is unwarranted in light of the facts of this particular case. The court also finds this case to be analogous to *Citrano v. Department of Registration and Education*, 90 Ill. App. 3d 937 (1st Dist. 1980). In *Citrano*, the Barber's Disciplinary Committee revoked the defendant-barber's license when it discovered that he had made several false statements on his license application, listed as character references persons whom he did not know, and received improper assistance on the license examination. *Citrano v. Dep't of Registration and Educ.*, 90 Ill. App. 3d 937, 939 (1st Dist. 1980). The Committee concluded that these actions "constituted a lack of good moral character" sufficient to justify revocation of his license. *Id.* However, the circuit court reversed that decision on appeal. *Id.* at 940. In doing so, the court noted

that, *inter alia*, (1) there was nothing in the record, other than the conduct complained of, to suggest that the barber was not a person of good moral character; and (2) it was undisputed that he was a professionally-skilled barber. *Id.* at 940–41.

The record in the cause *sub judice* reveals the similarities between these cases. First, there was nothing in the record, other than the unsupported conclusions of Judge Brown, to suggest that Plewa did not possess good moral character. While Plewa admitted that he answered question fifty-seven in the negative, there is no evidence that he *intended* to perpetrate a fraud either on Pisano or the Department, and the Superintendent did not call any witness to impeach Plewa's testimony. The most that can be said is that Plewa's answer to question fifty-seven, while incorrect, was a mistake based upon an honest but incorrect understanding of the question asked. Second, it is undisputed that Plewa was a professionally-skilled police officer, as evidenced by his "special commendation, four officer of the month awards, two problem solving awards, a meritorious unit award, three awards from the twenty-fifth district steering committee, a deployment operations award, an attendance recognition award, and approximately 115 departmental honorable mention awards." (Br. in Supp. 6; R. at 411 (Hr'g Tr. 219:7–22)).

Furthermore, and contrary to the Superintendent's conclusion during closing argument (R. at 395 (Hr'g Tr. 157:13–17)), there is no evidence that the Department would have declined to hire Plewa had it known the true answer to Question fifty-seven: although Pisano testified that he would have further investigated Plewa had Plewa answered Question fifty-seven in the affirmative, he also stated that the decision to hire Plewa was made by "somebody above [him]," and that he did not know what information those people had when making their decision. (R. at 387 (Hr'g Tr. 126:10–21), 390 (Hr'g Tr. 134:16–24, 135:1–19)). Moreover, Pisano testified that merely answering Question fifty-seven in the affirmative would not by itself disqualify someone from being a candidate. (R. at 390 (Hr'g Tr. 139:16–24, 140:1–11)). This is supported by the fact that Plewa was never charged with any wrongdoing in

connection with Marabanian (*i.e.* the "underlying criminal matter"), and in fact cooperated with and was helpful to Loan and Packert at all times. (R. at 380 (Hr'g Tr. 97:10–12, 98:3–5), 382 (Hr'g Tr. 107:22–24, 108:1–2, 383 (Hr'g Tr. 111:21–23), 384–85 (Hr'g Tr. 113:16–21, 114:1–3, 115:3–5, 115:20–24, 116:1–14, 117:1–5)). Finally, the court also notes that there is no indication that Plewa's actions with respect to the application process have had the effect of lowering police morale or undermining public confidence in the Department, a factor which has been given weight in several police board disciplinary cases. *See, e.g.*, *Launius v. Bd. of Fire & Police Comm'rs*, 151 Ill. 2d 419, 439 (1992); *Humbles v. Bd. of Fire & Police Comm'rs*, 53 Ill. App. 3d 731, 735 (2d Dist. 1977). In fact, Sergeant Robert Rentner, retired Lieutenant Dennis Ross and Captain Marc Buslik all testified that they would have no problem working with Plewa if he were re-hired. (R. at 399, 403, 405 (Hr'g Tr. 176:2–7, 191:1–10, 200:13–17)).

In sum, while this court affirms the Board's decision as to the charges relating to the application process, it reverses the Board as to those charges relating to providing false testimony. This court does not dispute that the integrity and honesty of our police officers is of the utmost importance to the city of Chicago; however, it also finds, as a matter of fundamental fairness that the sanction initially imposed by the Board (*i.e.* dismissal) would be inappropriate given the charges that this court has sustained as a basis for disciplinary action. Indeed, this conclusion was supported by counsel for the Board, who conceded at oral argument in front of this court that dismissal would be an unsuitable sanction for those charges relating solely to the application process. Accordingly, the court remands this matter to the Police Board and directs the Board to impose a more lenient sanction. In addition, because the only charges that this court has sustained as a basis for imposing sanctions relate solely to the application process, the Board should also consider the testimony of the various character witnesses when making its determination, specifically the testimony of Father Michael Osuch (R. at 396–98 (Hr'g Tr. 163:1–169:17)), Sergeant Robert Rentner (R. at 398–401 (Hr'g Tr. 169:24–182:17)), retired Lieutenant Dennis Ross (R. at 401–04 (Hr'g Tr. 182:24–195:14)), and Captain Marc Buslik (R. at 404–06 (Hr'g Tr. 196:7–

203:1)). However, the court otherwise leaves it to the Board discretion in determining what sanction is appropriate.

IV. ORDER

WHEREFORE, based on the evidence before it, the court:

(1) Affirms the Board's decision finding Plewa guilty of violating Rule 2 (Counts I, II, and III); Rule 3 (Counts I, II, and III); Rule 5 (Counts I, II, and III); Rule 14 (Counts I and II); and Rule 21;

(2) Reverses the Board's decision finding Plewa guilty of violating Rule 2 (Count IV); Rule 3 (Count IV); Rule 5 (Count IV); Rule 11 (Count I); and Rule 14 (Count III); and

(3) Remands this matter to the Police Board for it to impose a sanction more lenient than dismissal.

IT IS SO ORDERED:

ENTERED
JUDGE DIANE J. LARSEN-1771
APR 29 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge Diane Joan Larsen – Judge 1771

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Plevra

v.

No. 13 CH 19007

City of Chicago Police Board, etal.

ORDER

This matter, coming to be heard on the Superintendent's Motion to Reconsider the Courts April 29, 2014 order, counsel for the Superintendent and Plaintiff being present and the Court being fully advised,

IT IS HEREBY ORDERED THAT:

1. The motion to Reconsider is granted in part and denied in part.
2. The Court holds that there is no evidence in the record to support the charges Related to Plewas statements under oath.

Atty. No.: 44651

Name: M. Grant Grant Schumann, LLC

Atty. for: Defendant Superintendent

Address: 230 W. Monroe, Ste. 240

City/State/Zip: Chicago, IL 60604

Telephone: (312) 551-0111

ENTERED:

Dated:

ENTERED
JUDGE DIANE J. LARSEN-1771
JUL 31 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge **Judge's No.**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Plena

v.

City of Chicago Police Bd. et al

No. 13 CH 19003

ORDER

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3. The Court's Ruling in the April 29, 2014 order regarding the manifest weight of the evidence is affirmed.

4. The Court further states that its mistrial declaration from Plaintiff's counsel to the Superintendent's counsel that his/her employment application would not be sufficient for termination

5. Therefore, the Court grants the motion to reconsider to the extent that the Police Board may consider the charges of his/her on his employment application only. The Police Board may issue its decision on discipline without any restraint from this court.

6. The Court holds that the Police Board must review the charges related to Plaintiff's employment application and decide the appropriate penalty

Atty. No.: 44651

Name: M. Grant / Grant Schuman, LLC

Atty. for: Defendant Superintendent

Address: 230 W. Monroe #240

City/State/Zip: Chicago IL 60606

Telephone: (312) 551-0111

ENTERED:

Dated:

ENTERED
JUDGE DIANE J. LARSEN-1771
JUL 31 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge

Judge's No.

Order (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Plewa

v.

City of Chicago Police Bd., et al.

No. B CH 19002

p. 3/3

ORDER

This matter is entered and continued until October 6, 2014, at 9:30pm, in Room 2405 for further proceedings as necessary.

Atty. No.: 44051

Name: M. Grant / Grant Schumann, LLC

Atty. for: Superintendent

Address: 230 W. Monroe, Ste. 240

City/State/Zip: Chicago, IL 60604

Telephone: (312) 551-0111

ENTERED:

Dated: _____

Judge

Judge's No.

ENTERED
JUDGE DIANE J. LARSEN-1771
JUL 31 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY
DEPUTY CLERK

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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